



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-740-10 et seq.
Regulation title	Water Reclamation and Reuse Regulation
Action title	Amendment to the Water Reclamation and Reuse Regulation to promote enhance program implementation
Date this document prepared	October 7, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The primary purpose of this regulatory action is to amend the Water Reclamation and Reuse Regulation (9 VAC 25-740-10 et seq.), which became effective October 1, 2008. Since its implementation, both the Department of Environmental Quality (DEQ) and the public have identified needed changes to the regulation that would improve the State Water Control Board's ability to implement a more effective water reclamation and reuse regulatory program. Two items that will be addressed among other changes to improve implementation of the regulation are (i) the inflexibility of the regulation to accept deviations from design or operational requirements that may discourage projects capable of producing or distributing reclaimed water suitable for reuse in a manner protective of the environment and public health; and (ii) the lack provisions to authorize temporary water reclamation and reuse without a permit during periods of significant drought to conserve potable water supply.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal basis for the Water Reclamation and Reuse Regulation (9 VAC 25-740-10 et seq.) is the State Water Control Law (Law) (Chapter 3.1 of Title 62.1 of the Code of Virginia). § 62.1-44.15 authorizes the State Water Control Board (Board) to promulgate regulations necessary to carry out its powers and duties.

Specific to water reclamation and reuse, § 62.1-44.2 establishes the purpose of the Law, among other things, to promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. More specifically, § 62.1-44.15(10) and § 62.1-44.15(15), give authority to the Board to adopt regulations as it deems necessary to enforce the general water quality management program, and to promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Amendments to the Water Reclamation and Reuse Regulation (9 VAC 25-740-10 et seq.) are needed primarily to address issues that would improve the Board's ability to effectively promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. Other amendments to allow (i) design or operational deviations for facilities still capable of producing or distributing reclaimed water in a manner protective of the environment and public health, and (ii) temporary authorization of water reclamation and reuse without a permit during periods of significant drought, are needed to promote and encourage water reclamation and reuse. These amendments meet the purpose of State Water Control Law and are within the authority of the Board to establish pursuant to §§ 62.1-44.2 and 62.1-44.15(15) of the Code of Virginia.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The following will be addressed as part of this regulatory action:

1. Amendments to the Water Reclamation and Reuse Regulation (9 VAC 25-740-10 et seq.)
 - a. Add provisions to allow design or operational deviations for facilities still capable of producing or distributing reclaimed water in a manner protective of the environment and public health.
 - b. Add provisions for an emergency authorization to reclaim and reuse wastewater without a permit during periods of significant drought.
 - c. Add a requirement for an auxiliary or backup plan for conjunctive wastewater treatment works and reclamation systems that rely primarily or completely on water reuse for elimination of wastewater.

- d. Modify and add requirements to manage pollutants of concern from significant industrial users for reclamation systems and satellite reclamation systems that will produce Level 1 reclaimed water, and for reclamation systems that are part of an indirect potable reuse project.
- e. Add UV disinfection standards to Level 1 and Level 2 reclaimed water standards and include associated monitoring requirements.
- f. Add or modify several terms and their associated definitions related to the use of these terms within the context of the regulation.
- g. Modify language to clarify service agreement or contract requirements for end users of reclaimed water, and alternative permitting options for reclaimed water distribution systems.
- h. Modify activities excluded from the requirements of the regulation related to alternative onsite sewage systems permitted by the Virginia Department of Health, utilization of harvested rainwater and storm water, and intentional indirect reuse of reclaimed water.
- i. Add the Water Withdrawal Reporting Regulation (9 VAC 25-200) to the list of other Board regulations with which the Water Reclamation and Reuse Regulation has a relationship.
- j. Modify the point of compliance (POC) for reclaimed water standards to include POCs for certain system storage facilities and reclaimed water distribution systems, in addition to POCs required for reclamation systems and satellite reclamation systems.
- k. Add reclaimed water monitoring requirements for system storage that is either seasonal or greater than 24 hours with exceptions.
- l. Add reclaimed water monitoring to maintenance requirements for reclaimed water distribution systems included in the Reclaimed Water Management plan.
- m. Modify reuses listed in regulation to include “irrigation to establish erosion control” and move “ship ballast” to industrial reuses requiring a minimum of Level 1 reclaimed water.
- n. Modify the description of unlisted reuses and add all reuses of reclaimed industrial wastewater that will require reclaimed water standards and monitoring requirements developed on a case-by-case basis.
- o. Add permit application, design, construction, and operation requirements that are specific to indirect potable reuse projects.
- p. Add a provision that allows reclaimed water agents to inspect end users’ reuses and storage facilities as part of the service agreement or contract between the reclaimed water agent and an end user.
- q. Add a requirement to place valves and outlets on reclaimed water distribution system pipelines that allow access or isolation of pipe sections for maintenance activities.
- r. Modify cross-connection and backflow prevention requirements for reclaimed water distribution systems to be consistent with regulations of other state agencies (e.g., Uniform State Building Code).
- s. Clarify that the requirement for reclaimed water distribution systems to maintain reclaimed water standards for intended reuses does not apply to Corrective Action Thresholds, which are operational standards for only reclamation systems and satellite reclamation systems.

t. Modify Class I reliability requirements for Level 1 reclamation systems and satellite reclamation systems to include associated pump stations not addressed by the Sewage Collection and Treatment Regulations, 9 VAC 25-790.

u. Add requirement prohibiting application of reclaimed water during winds that would cause overspray or aerosol drift into or beyond buffer zones of setbacks. This requirement is consistent with the prohibition of reclaimed water runoff from irrigation sites.

v. Make minor changes to:

- (1) Clarify or make more specific the language of the regulation,
- (2) Eliminate redundancy,
- (3) Relate separate sections or subdivisions of the regulation, and
- (4) Correct grammatical and typographical errors.

2. Other

a. Other amendments to the Water Reclamation and Reuse Regulation may be considered by the Board based on comments received in response to the NOIRA or discussions of the regulatory advisory panel (RAP). If recommended by the RAP, the Board may also consider amendments to the Fees for Permits and Certificates regulation (9 VAC 25-20-10 et seq.).

b. The Board is studying the possible reuse of reclaimed water for ground water recharge. The Board will discuss its findings with the RAP and may include additional amendments to address this reuse in the proposed regulatory action.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board could take no regulatory action at this time and address implementation deficiencies of the Water Reclamation and Reuse Regulation in guidance. This would diminish the ability of the Board to effectively promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health, and would result in confusion to the public. Other amendments as discussed under "Need" of this document can not be addressed in guidance without a legal basis established in law or regulation, thereby precluding further opportunities to promote and encourage water reclamation and reuse contrary to the purpose of State Water Control Law stated in § 62.1-44.2.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the

regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

The Board is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.]

Anyone wishing to submit written comments may do so by mail, email or fax to Ms. Valerie Rourke, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218; phone: (804)698-4158; e-mail: Valerie.Rourke@deq.virginia.gov; fax: (804)698-4116. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by DEQ by the close of the public comment period.

Public Hearing at Proposed Stage

A public hearing will be held after publication of the proposed stage of the regulatory action.

Regulatory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Board consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.